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In the Matter of Policies and Rules Concerning Unauthorized  
Changes of Consumers' Long Distance Carriers

CC Docket No. 94-129

FEDERAL COMMUNICATIONS COMMISSION

10 FCC Rcd 9560; 1995 FCC LEXIS 3900; 78 Rad. Reg. 2d (P &  
F) 215

RELEASE-NUMBER: FCC 95-225

June 14, 1995 Released; Adopted June 13, 1995

ACTION:    [\*\*1]    REPORT AND ORDER

JUDGES:

By the Commission

OPINION:

[\*9560]    I.    INTRODUCTION

1. In this Report and Order, we prescribe the general form and content of the letter of agency (LOA) used to authorize a change in a consumer's primary long distance telephone company. An LOA is a document, signed by the customer, which states that a particular carrier has been selected as that customer's "primary interexchange carrier" ("PIC"). We take this action in response to the thousands of complaints we have received regarding unauthorized changes of consumers' PICs, a practice commonly known as "slamming." n1 We also take this action in response to the tens of thousands of additional complaints received annually by local exchange carriers (LECs) and state regulatory bodies. n2 These rules [\*9561] and policies prohibit certain deceptive or confusing marketing practices of some interexchange carriers (IXCs) and are intended to significantly reduce consumer confusion over the use and function of the LOA. In crafting these rules, we have balanced the industry's need for flexibility in marketing services to consumers and the need to protect consumers from deceptive marketing practices.

n1 "Slamming" means the unauthorized conversion of a customer's interexchange carrier by another interexchange carrier, an interexchange resale carrier, or a subcontracted telemarketer. Cherry Communications, Inc., Consent Decree, 9 FCC Rcd 2086, 2087 (1994).

n2 Pacific Bell and Nevada Bell state that on average, they "receive approximately 350,000 PIC changes from the interexchange carriers . . . each month. Two to three percent of those changes generate complaints. . . ." Comments of Pacific Bell and Nevada Bell at 1-2. This represents 7,000 to 10,500 complaints per month received by Pacific Bell and Nevada Bell alone. See also Comments of GTE Service Corporation (GTE), NYNEX Telephone Companies (NYNEX), Southwestern Bell Telephone Company (Southwestern Bell), People of the State of California, et al. (California PUC), Missouri Public Service Commission, et al. (Missouri PSC), New York State Department of Public Service (New York Public Service), Public Utility Commission of Texas (PUCT), Florida Public Service Commission (Florida PUC), and National Association of Attorney's General (NAAG).    [\*\*2]

2. Specifically, we adopt rules that prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document. These rules require that the LOA be a separate or severable document whose sole purpose is to authorize a change in a consumer's primary long distance carrier. Among other things, we prescribe the minimum contents of the LOA and require that the LOA be written in clear and unambiguous language. Furthermore, we prohibit all "negative option" LOAs and require that LOAs contain complete translations if they employ more than one language. Finally, we except from the "separate or severable" rule a check that serves as an LOA, so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with our LOA requirements.

n3 "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

## II. BACKGROUND

3. The Commission began receiving slamming complaints after the entry of multiple competitors into the long distance telephone marketplace following the divestiture of American Telephone & Telegraph Company (AT&T). At that time, IXC's began to compete for presubscription agreements with potential customers as a result of the equal access rules and the procedures the Commission and the courts imposed on the interexchange telephone industry.

n4 For a more detailed history of the actions the Commission has taken thus far regarding "slamming" and its related issues, see Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Notice of Proposed Rule Making, 9 FCC Rcd 6885, 6886 (1994) (NPRM).

n5 Presubscription is the process that enables each customer to select one primary IXC, from among several available carriers, for the customer's phone line(s). Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911, 928 (1985) (Allocation Order). A customer accesses the primary IXC's services by dialing "1" only. Id. at 911.

n6 Equal access for IXC's is that which is equal in type, quality, and price to the access to local exchange facilities provided to AT&T and its affiliates. United States v. American Tel. & Tel., 552 F. Supp. 131, 227 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (Modification of Final Judgment or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." Allocation Order, 101 FCC 2d at 911 (end user also has the capability to use other IXC's by dialing access codes).

n7 Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (Allocation Order), recon. denied, 102 FCC 2d 503 (1985) (Reconsideration Order); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985) (Waiver Order). [\*\*4]

4. The Commission's original allocation plan required IXC's to have on file an LOA signed by the consumer before submitting to the LEC an order to change a consumer's PIC. n8 The LOA provided evidence that the customer had selected that IXC as its long distance telephone company. n9 IXC's asserted, however, that

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this requirement would stifle competition because, as a practical matter, consumers frequently would not execute the LOAs even though they had agreed to change their PIC. In response to those objections, the Commission relaxed the requirement and allowed IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs." n10 In addition, the Commission denied a petition filed by the Illinois Citizens Utility Board that sought the adoption of additional rules governing PIC changes. n11 In balancing the industry's need for flexibility in marketing its services to consumers and the need to protect consumers from deceptive marketing tactics, the Commission concluded that the rules in place at that time adequately protected consumers against "slamming." n12

n8 A PIC change may be initiated when a consumer requests the change directly from the new IXC or when the IXC solicits the consumer through telemarketing or direct mail.

n9 Allocation Order, 101 FCC 2d at 929.

n10 Waiver Order, 101 FCC 2d at 942.

n11 Illinois Citizens Utility Board Petition for Rule Making, 2 FCC Rcd 1726 (1987) (Illinois CUB Order).

n12 The Commission emphasized in the Illinois CUB Order that consumers are not liable for the charges assessed by LECs for PIC changes that were not authorized by the consumers. Further, the Commission reiterated that LECs are not permitted to collect any charges from a consumer for changing the consumer's PIC if the consumer denies requesting the change and neither the LEC nor the IXC can produce sufficient evidence that the consumer requested the change. In most cases, that evidence would be the LOA. Illinois CUB Order, 2 FCC Rcd at 1728, 1729. [\*\*5]

5. Despite the consumer protection mechanisms provided by the Commission's rules and policies, some carriers continued to engage in the practice of "slamming." In response to a petition [\*9563] filed by AT&T and MCI Telecommunications Corporation (MCI) in accordance with a court settlement between them, n13 we adopted rules and procedures for verification of long distance service telemarketing sales. Specifically, we required IXCs to institute one of four confirmation procedures before submitting to LECs PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling, or confirming the change order.

n13 See generally American Telephone and Telegraph Company, Petition for Rule Making, CC Docket No. 91-64, Notice of Proposed Rule Making, 6 FCC Rcd 1689 (1991) (PIC Change NPRM); Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, Report and Order, 7 FCC Rcd 1038 (1992) (PIC Verification Order), recon. denied, 8 FCC Rcd 3215 (1993) (PIC Verification Reconsideration Order). [\*\*6]

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6. Even after the adoption of these additional consumer safeguards, we continued to receive complaints from consumers who allege that their PIC selections have been changed without their permission. Many of these complaints describe apparently deceptive marketing practices in which consumers are induced to sign a form document that does not clearly advise the consumers that they are authorizing a change in their PIC. Consumers have complained that the "LOA" forms were "disguised" as contest entry forms, prize claim forms or solicitations for charitable contributions.

7. Consequently, the Commission, on its own motion, initiated this rule making proceeding n14. The Commission proposed rules to separate the LOA from all promotional inducements and make the LOA, which has been previously defined by the Commission, a separate document on a separate page, the sole purpose of which is to authorize a PIC change. The Commission also sought public comment on a number of related issues, including: (1) whether LOAs should contain only the name of the rate-setting carrier; (2) whether consumers should be liable for the long distance telephone charges billed by unauthorized carriers; (3) [\*\*7] whether the Commission should adopt rules requiring that bilingual LOAs contain complete translations in both languages; and (4) whether the Commission should extend its PIC change verification procedure to consumer-initiated 800 calls.

n14 NPRM, 9 FCC Rcd 6885 (1994).

### III. DISCUSSION

[\*9564] 8. After the AT&T divestiture, the Commission sought to encourage a competitive long distance telephone market. To that end, the Commission gave significant weight to the argument that the only way for non-dominant carriers to compete effectively with the dominant carrier was for all carriers to be allowed to market their services with significant flexibility. As competition in the long distance telephone market has emerged, our experience in balancing consumer protection concerns and IXC marketing flexibility has evolved. Our initial decision not to require written LOAs prior to a PIC change indicated to the industry our willingness to allow IXCs to police their own marketing activities. Although we still believe self-policing to be an integral consumer protection mechanism, we cannot ignore the very large number of slamming complaints that consumers continue to submit to their local phone [\*\*8] companies, to their state regulatory bodies, and to this Commission.

9. For any competitive market to work efficiently, consumers must have information about their possible market choices and the opportunity to make their own choices about the products and services they buy. Slamming takes away those choices from consumers. Slamming also distorts the long distance competitive market because it rewards those companies who engage in deceptive and misleading marketing practices by unfairly increasing their customer base at the expense of those companies that market in a fair and informative manner. In light of the foregoing, we find it necessary to prescribe rules that we believe will serve as an informative and useful consumer protection mechanism and an important rule of fair competition for the long distance telephone industry, while recognizing the industry's need for flexibility in marketing services to consumers. n15

n15 All comments and replies on all matters in this proceeding were considered. In our discussion of the proposed rules, however, we highlight those comments representative of particular arguments or positions relevant to our decisions.

A. The Minimum [\*\*9] Requirements for LOAs

10. We received nearly unanimous support for our proposed rule prescribing the general form and minimum content for an LOA. As proposed in section 64.1150(e), we will require that the LOA contain: (1) the subscriber's n16 villing name and address and each telephone number to be covered by the PIC change order; (2) a line stating the subscriber's decision to change the PIC from the current inerexchange carrier to the prospective interexchange [\*\*9565] carrier; (3) a statement that the subscriber designates the interexchange carrier to act as the subscriber's agent for the PIC change; and (4) a statement that the subscriber understands that any PIC selection chosen may involve a charge to the subscriber for changing the subscriber's PIC. n17 As stated in the NPRM, these provisions organize and restate the LOA requirements of the Allocation Order and the PIC Verification Order into one standard rule. n18 This simplified restatement of current Commisssion requirements regarding LOAs was met with general acceptance by the commenters and thus will be adopted as proposed. We refrain from prescribing specific LOA language at this time. We agree with some of the commenters [\*\*10] that differing state requirements and differences in the target market for individual promotional campaigns indicate that IXCs may be better able to tailor the specific language in a way that clearly informs the consumer of the impending choice. We believe that IXCs can police themselves in this matter given clear guidance, and we believe that these rules give that guidance. Also, we agree with Sprint Communications Co. (Sprint) that this new rule and the existing telemarketing rules (Section 64.1100) should be consistent. We therefore amend Section 64.1100(a) to read as follows: "The IXC has obtained the customer's written authorization in a form that meets the requirements of Section 64.1150, below."

n16 In this context, the term "subscriber" is used because the only individual qualified to authorize a PIC change is the telephone line subscriber.

n17 See Appendix B, Section 64.1150(e)(1)-(3), (5), infra. We will discuss proposed section 64.1150(e)(4) in paragraphs 25-27, infra. That proposed section provides that an LOA contain language that confirms "that the subscriber understands that only one interexchange carrier may be designated as the subscriber's primary interexchange carrier for any one telephone number and that selection of multiple carriers will invalidate all such selections." In light of comments and replies from entities including Allnet Communication Services, Inc. (Allnet), Ameritech Operating Companies (Ameritech), General Communication, Inc. (GCI), and GTE, we will modify section 64.1150(e) to allow for the possibility of multi-PIC jurisdictions.

n18 NPRM, 9 FCC Rcd 6885, 6887. [\*\*11]

11. Nearly every entity choosing to comment on the matter supported our proposed prohibition of "negative option" LOAs. n19 As noted above, this type of LOA requires a consumer to take some action to avoid a PIC change. Because we find that such LOAs impose an unreasonable burden on consumers who do not wish to change their PICs, we adopt the proposed prohibition. Further, we

[\*9566] agree with the comments of Allnet that the proposed section might be construed as somewhat vague. We therefore adopt some of Allnet's suggested language and modify the provision to read: "Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier." n20

n19 The Public Utility Commission of Texas (PUCT) contends that if the language in section 64.1150(e) "is intended to proscribe the negative check-off that appears on some sweepstakes entries, the PUCT believes this language is unnecessary if the combination of a sweepstakes entry and LOA on the same form is prohibited." Even though we are adopting a "separate or severable" LOA rule, an IXC still might attempt to fashion a "negative option" LOA on a separate page. Therefore, we will adopt the prohibition as proposed.

n20 Section 64.1150(e). [\*\*12]

12. Although many commenters oppose any Commission-prescribed LOA text, font, or type size, nearly all commenters agreed that "[a]t a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language." n21 Although we adopt these general guidelines, we refrain from prescribing a specific font or type size. Long distance telephone companies' marketing campaigns take on many different forms. Their services may be advertised in myriad ways, and in myriad type sizes, depending on the advertising medium and target audience. n22 Therefore, we will allow IXCs the flexibility to design the LOA in a manner that is complimentary to their associated promotional material. However, we will require LOAs to be printed with type of sufficient size and readable type to be clearly legible to the consumer. This means that LOAs must generally be comparable in font and size to their associated promotional material. n23

n21 Proposed section 64.1150(e).

n22 IXCs may advertise their service offerings in magazines, newspapers, and on airline ticket jackets.

n23 For example, the use of "fine print" in the drafting of LOAs will be prohibited. [\*\*13]

#### B. The LOA as a Separate or Severable Document

13. Our proposal to separate the LOA physically from all promotional materials has drawn both comments favoring it and comments questioning it. Specifically, we proposed that "[t]he letter of agency shall be a separate document whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change. . . . The letter of agency shall not be combined with inducements of any kind on the same document." n24 The opponents of our proposal argue that this proposed [\*9567] rule "may" be found unconstitutional n25 and that it "goes farther than is necessary" to protect consumers from salmming. n26 Proponents of our proposed rule argue that separating the LOA from inducements is necessary to ensure that consumers will be clearly informed as to the actions they are being asked to make. n27 In

fact, some commenters contend we do not go far enough to protect consumers. n28 In response to these comments, we first address whether the First Amendment to the Constitution n29 [\*\*14] would permit us to require the LOA to be a separate document. Then, we address whether it is in the public interest for us to adopt this requirement.

n24 Section 64.1150(b), (c).

n25 See Comments and Replies of AT&T, MCI and One Call Communications, Inc. (One Call).

n26 See Comments AT&T, MCI, ACC Corporation (ACC Corp.), and Lexicom, Inc. (Lexicom).

n27 See Comments of Sprint Communications Co. (Sprint), Competitive Telecommunications Association (CompTel), and Missouri PSC.

n28 See Letter from Illinois congressional Delegation, note 77, *infra* (Commission should consider absolving consumers of all toll charges accessed by unauthorized carriers), and Comments of Southwestern Bell and NYNEX (Commission should prescribe specific language for LOA), NAAG (Commission should require that all change orders be followed by written confirmation), and Pacific Bell and Nevada Bell (monetary penalty should be imposed on IXC's whose complaints evidence a pattern of abuse).

n29 U.S.C.A. Const. Amend. 1.

#### 1. First Amendment Considerations

##### a. Comments

14. Among the commenters on the First Amendment issue, MCI's argument is the most detailed. MCI argues that the proposed rule, as [\*\*15] written, may be unconstitutional because "[w]here commercial speech is accurate -- i.e., not inherently misleading or deceptive -- the government's ability to regulate that speech is limited. n30 MCI contends that "[a]ny court reviewing the proposed rules would undoubtedly analyze their constitutionality by applying a Commercial Free Speech analysis." n31 Under that analysis, MCI maintains that "a court would view the speech which the proposed [9568] rules intended to regulate as not inherently misleading" n32 because "any attendant advertising or marketing [attached to an LOA] can be presented in a way which is not misleading." n33 Therefore, MCI argues, the combined LOA/inducement cannot be inherently misleading. Further, MCI contends that the heart of the Commission's concern is directed not at eliminating inherently misleading speech, but, rather, at eliminating potential confusion regarding the effect of the LOA form. n34 Finally, MCI maintains that "the Commission would have difficulty showing that the regulation is no more restrictive than necessary to meet the governmental objective" n35 of eliminating customer "confusion."

n30 MCI Comments at 10.

n31 *Id.* at 9 (citing *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980) (Central Hudson) (Supreme Court generally considers commercial speech to be "expression related solely to the

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economic interests of the speaker and its audience"); Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) ((Virginia Bd. of Pharmacy); Edenfield v. Fane, 113 S. Ct. 792 (1993)).

n32 Id.

n33 Id.

n34 Id. at 10 (citing NPRM at 5).

n35 Id. at 11. [\*\*16]

b. Decision

15. Notwithstanding MCI's First Amendment arguments, the rules we have adopted in this proceeding meet the tests set out by the Supreme Court for permissible government regulation of commercial speech under the First Amendment. First of all, the rules adopted in this proceeding do not prohibit any speech, commercial or otherwise. They merely require that the carriers' method of delivery of that speech not confuse or mislead the consumer. The record in this proceeding is replete with comments supporting our conclusion that the present practices of many carriers have confused and misled thousands of consumers into thinking they were participating in some type of activity other than switching their long distance carrier, when, in reality, they were doing exactly that. n36 The regulations that we are adopting are designed to minimize this confusion by requiring that the language of the LOA be clear and unconfusing, contain specific information that will assure that the signer of the LOA can understand exactly what he or she is signing, and separate the LOA from any promotional materials so that the consumer is more likely to be able to differentiate commercial incentives [\*\*17] offered by the carriers from the actual commitment to changing his or her primary interexchange carrier.

n36 This is evidenced by the large volume of complaints received by this Commission, LECs and state regulatory bodies. See note 2, infra.

16. The Supreme Court has held that the government may ban forms of communication more likely to deceive the public than to inform it. Central Hudson Gas & Electric Corp. v. Public Service Comm'n of N.Y., 477 U.S. 557, 561 (1980). We have tried to narrowly design our regulations to eliminate deception and yet still permit [\*9569] the free flow of information.

17. The Supreme Court also has held that it is permissible to use some restrictions on the time, place, and manner of commercial speech provided that they are justified without reference to the content of the regulated speech, that they serve a significant government interest, and that in so doing they leave open ample alternative channels for the communication of the information. Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976). The rules we adopt here are restrictions in the manner of delivery and meet all of the requirements set out [\*\*18] by the Supreme Court. Specifically, we are restricting only the manner in which the material is presented: it must be clear and not confusing, it must include enough information to permit the customer to know what he or she is doing by signing the document and who his or her long distance carrier will be, and it must be separate or severable from other commercial incentives. As for a significant

governmental interest, the very process of designating a primary long distance carrier has been established by this Commission as part of the process of providing options to consumers in choosing their interexchange services. We created the LOA as a method for assuring that the consumer's choice was honored and to protect the consumer from unauthorized changes. The sheer volume of complaints that we and the states have received demonstrates that there are still some flaws in the system we have designed and that there is need for refinements to provide protection to the consumers from the present practices that have led to so many unauthorized conversions. Second, we are not prescribing specific language either in the LOA or in any promotional materials; rather we are specifying the minimum [\*\*19] information that an LOA must include and have placed no restrictions on any promotional materials.<sup>37</sup>

n37 See para. 10, supra. and paras. 18 and 24, infra.

18. Finally, as indicated above, we have chosen the method of regulation that least impinges on the carriers' free choice of how to promote their services. We are not proposing to restrict IXC's use of their promotional materials, but merely are specifying that they be separate or severable from the actual document that authorizes a PIC change. Carriers are free to use whatever promotional materials they choose, and whatever avenues for distribution of those promotional materials that they choose. All we are requiring is that they comply with our minimal requirement that the actual document authorizing a PIC change be separate or severable from the promotional materials so that it is clear to the consumer that signing that document will do just that. Our goal is to minimize deceptive promotional practices and still permit the consumer to be informed about her or his choices.

## [\*9570] 2. Public Interest Considerations

### a. Comments

19. Generally, consumer groups, state regulatory bodies, local telephone companies, some [\*\*20] IXC's, and some interexchange resellers support our proposal to separate the LOA from promotional material, n38 while most facility-based IXC's and some resellers oppose this measure. n39 The proponents stress that this provision, above all others, will ensure that consumers will be fully and clearly informed as to the action they must take to effect a PIC change. Sprint contends that "combining the LOA with promotional inducements, such as a vacation contest, the endorsement portion of a check that can be cashed by the consumer, etc., has the potential for outright deception, or at the very least for leading to misunderstandings between consumers and carriers." n40 LDDS states that "the LOA should not be used for any purpose other than to designate the end-user's choice of PIC." n41 LDDS further asserts that "[a]ny ancillary marketing activities should be handled via documents physically separate from the LOA" n42 and that "this should eliminate customer confusion about the purpose of the LOA document itself." n43 Consumer Action "strongly agree[s] that the LOA needs to be on a separate piece of paper that is independent of any inducements such as a check or contest entry form." n44 [\*\*21] Consumer Action asserts that "[a] consumer's focus needs to be on the LOA and its implications" n45 and that "[c]ombining it with inducements does nothing but confuse and mislead." n46

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n38 For example, Consumer Action, NY Public Service, Sprint, NYNEX, and LDDS Communications, Inc. (LDDS) all supported this provision.

n39 For example, AT&T, MCI, and Touch 1 Inc. & Touch 1 Communications, Inc. (Touch 1) opposed this provision.

n40 Sprint Comments at 5.

n41 LDDS Comments at 5.

n42 Id.

n43 Id.

n44 Consumer Action Comments at 2.

n45 Id.

n46 Id.

20. Other commenters take a contrary view, however, arguing that this proposal is overbroad. AT&T argues that "[t]he proposed rule absolutely barring combined LOA/inducements goes far beyond what is necessary to protect telephone subscribers from abuses or [\*9571] deception, and would impose serious hardships on both consumers and IXC's." n47 AT&T further contends that these problems would be cured by the Commission's "companion proposals in this docket requiring that LOAs clearly and unambiguously set forth in a legible typeface all of the Commission's prescribed disclosures." n48 MCI argues that "[t]hese proposals go far beyond the elimination [\*\*22] of sharp practices because they would unfairly impact the legitimate marketing practices of many carriers." n49 America's Carriers Telecommunications Association (ACTA) asserts that "promotions are a useful marketing tool that are favored by both large and small carriers. However, it is the smaller carriers that will be most impacted by the required separation, for such carriers do not have available to them the alternatives of massive advertising campaigns on radio and nationwide television." n50

n47 AT&T Comments at 12.

n48 Id. at 13.

n49 MCI Comments at 3-4.

n50 ACTA Comments at i.

#### b. Decision

21. Based on our investigation of consumer complaints concerning LOAs, we find that abuses have occurred and continue to occur at an increasing rate. Much of the abuse, misrepresentation, and consumer confusion occurs when an inducement and an LOA are combined in the same document in a deceptive or misleading manner. These complaints generally describe apparently deceptive marketing practices in which consumers are induced to sign a form document that does not clearly advise the consumers that they are authorizing a change in

their PIC. As we have described above, consumers [\*\*23] have complained that the "LOA" forms were "disguised" as contest entry forms, prize claim forms, or solicitations for charitable contributions. The characteristic common to all of these marketing practices is that the inducement is combined with the LOA and the inducement language is prominently displayed on the inducement/LOA form while the PIC change language is not, thus leading to consumer confusion.

22. We believe that consumers and industry alike should be clearly informed as to what will be expected to authorize a change of a consumer's long distance telephone service. Our experience indicates that for fair competition to continue, consumers must have clear and unambiguous information about the actions and the choices they are being asked to make. Although we think that a consumer may reasonably choose to change long distance telephone services because of a carrier's inducements, we are troubled by the number of consumers nationwide who are not given the opportunity to [\*9572] make that informed choice because they are deceived by an LOA that is disguised as a contest entry, prize claim form, or charitable solicitation. We believe that the only way to ensure that the consumer [\*\*24] can always make a truly informed choice from now on is to require that the LOA be a separate or severable document. n51 The LOA must therefore be a separate document or must be severable -- for example, attached by perforations that, when torn out, contains only authorizing language. Under this requirement, no IXC will be able to mix its promotional materials with the LOA in a deceptive or confusing manner.

n51 As discussed in paragraphs 25 and 26, infra., we make a limited exception to this general "separate or severable document" rule in our handling of "PIC change" checks.

23. Although this rule may require some IXCs to change certain details in their use of such promotional tools, we do not believe that our rule will seriously affect the basic effect and function of the IXCs' marketing campaigns. With regard to charitable solicitations, or contest and sweepstakes entries, IXCs can simply use their promotional materials to encourage consumers to sign the LOA. For example, it is conceivable that an LOA might be in the form of a postage-paid postcard attached along the "inner spine" of a magazine facing the IXCs' advertisement touting its service and inducements. It is [\*\*25] also conceivable that an IXC might use a postage-paid postcard LOA that is initially attached to an airline ticket jacket by a perforated edge. The promotional materials and inducements would be relegated to the "jacket" portion of the airline ticket jacket and the LOA, a separate and distinct form, could be torn from the "jacket" portion and mailed separately. Finally, those IXCs using "one-page" promotional materials could employ a variation of this approach. They could use a single sheet with the IXC's promotional inducements on the top portion of the sheet and a separable postcard LOA on the bottom, initially attached to the sheet by perforations, but ultimately detached from the sheet and mailed. If our rules are followed and the LOA is properly captioned, consumers should be clearly informed as to the action they are being asked to take. In light of this discussion, we believe that the benefits gained by better informed consumers outweigh the possibilities of slightly decreased marketing flexibility that some IXCs might experience.

24. MCI mistakenly construes our proposal as unreasonably restricting the use of their promotional materials. MCI argues that "[w]ithout [\*\*26] defining impermissible 'inducements,' it is impossible to distinguish between

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legitimate commercial incentives, as distinct from deceptive practices that ought to be prohibited. If the Commission is seeking to foreclose all promotional materials or advertisements used with LOAs, its proposal is too sweeping." n52 [\*9573] Contrary to MCI's assertions, we are in no way prohibiting the use of marketing campaigns that include contest or sweepstakes entries, charitable solicitations, or checks. We are merely taking the limited, necessary step of separating the Commission-prescribed authorizing document from the commercial inducements. n53 We take this action because thousands of consumers have complained to us and tens of thousands more have complained to their LECs and state regulatory bodies that when they enter the contests, claim the prizes, or respond to the charity solicitations employed by some IXCs, they did not intend to switch their long distance carriers.

n52 MCI Comments at 5.

n53 This action is a far less restrictive alternative than requiring the LOA and promotional material to be in separate envelopes. See Comments of Southwestern Bell.

25. We do, however, believe a limited [\*27] exception should be made for PIC change checks. Although some IXCs have used checks to mislead and deceive consumers to change their PICs, we recognize that other IXCs use checks in their marketing campaigns in an appropriate and non-misleading manner, which have resulted in minimal consumer complaint. AT&T and MCI assert that their "PIC change" checks are clear and unambiguous and clearly inform the consumer that signing such a check will result in a PIC change. Both companies claim that their marketing material accompanying the check also informs the consumer that signing the check will result in a PIC change. Both companies also cite the absence of consumer complaints against their respective check marketing strategy as evidence that this form of marketing should not be prohibited by our "separate document" LOA proposal. n54

n54 See Comments of AT&T and MCI.

26. We are persuaded by the arguments of AT&T and MCI, notwithstanding our negative experience with some IXCs that deceptively use checks to market their services. In an effort to narrowly tailor our requirements, we find that the checks that some carriers, such as AT&T and MCI use as LOAs can be excepted from our [\*28] "separate or severable document" requirement. Generally, such checks contain only the required LOA language and the necessary information to make them negotiable instruments (bank account number, payee's name, amount, etc.). When an "inducement" check does not contain additional promotional information, we think that it is unlikely that consumers will be unable to discern that the primary purpose of the check is to authorize a PIC change. Typically, a "PIC change" check from these IXCs contains a banner title that reads "Endorse Check to Switch to . . ." or "Endorsement of this Check Switches Your Long Distance Service to. . ." Indeed, a survey of the consumer complaints that we have received reveals that these checks are seldom the source of actual unauthorized [\*9574] conversions. n55 To ensure that such checks do not mislead or confuse consumers, we shall require that a valid LOA/inducement check contain only the required LOA language and the necessary information to make it a negotiable instrument, and shall not contain any promotional language or material. We require carriers to continue to place the required LOA language near the signature line on the back of the check. In

10 FCC Rcd 9560, \*9574; 1995 FCC LEXIS 3900, \*\*28;  
78 Rad. Reg. 2d (P & F) 215

addition, [\*\*29] we shall require that carriers print, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC change by signing the check. We think that this additional safeguard, along with all other requirements applicable to LOAs, n56 will ensure that consumers are not confused or misled when carriers use inducement checks as a marketing tool. n57

n55 However, we have received several informal complaints objecting to the use of checks for this purpose, even though no unauthorized conversion has actually taken place.

n56 In other words, checks that are used as LOAs must satisfy all requirements applicable to LOAs.

n57 We will exercise our discretion in making any further exceptions to our "separate or severable document" rule.

27. We want to emphasize that this provision should reduce complaints against most IXC's because consumers should be on clear notice that they are changing their long distance telephone service. Further, consumers and this Commission should, under this requirement, be better able to identify intentionally misleading practices. IXC's should easily be able to fashion LOAs that will be unlikely to engender complaints [\*\*30] and thereby come under Commission scrutiny. We see serious problems with less specific LOA requirements that, under the guise of permitting more marketing "flexibility," would effectively require us to scrutinize many, perhaps most, LOAs in response to consumer complaints, as is now the case. n58 Such a result would, we think, be much more intrusive than our new rule, which should remove most LOAs from the realm of dispute. Therefore, we adopt the rule to require the LOA to consist of a separate or severable document -- that is, a document containing the minimum language required to authorize a PIC change as described in Section 64.1150(e), printed with a type of sufficient size and readable type to be clearly legible with no [\*9575] inducements. We believe that this requirement will prevent certain current deceptive or confusing marketing practices, while recognizing the need of the industry for flexibility to market services to consumers. n59

n58 We encourage entities such as LECs to take additional steps that might help reduce slamming in their service areas. The California PUC states, and AT&T acknowledges, that Pacific Bell has "an option for their customers known as a [PIC] freeze. Under this option the customer must contact his local exchange carrier in order to change his long distance carrier. IXC's are not allowed to act as agents. . . . [Pacific Bell] usually mention[s] this option to customers once they have been slammed. One idea is to have LECs provide customers with this option before they have been slammed." California PUC Comments at 4-5.

n59 The rule adopted here would, for example, prohibit the use of forms that combine LOAs with the language of contest entries, prize claims and charitable solicitations. [\*\*31]

#### C. Other Unauthorized Conversion Issues

##### 1. The Carrier Named on the LOA

10 FCC Rcd 9560, \*9575; 1995 FCC LEXIS 3900, \*\*31;  
78 Rad. Reg. 2d (P & F) 215

28. In the NPRM, we sought comment on whether LOAs should contain only the name of the carrier that directly provides the interexchange service to the consumer. We recognize that there may be more than one carrier technically involved in the provision of long distance service to a consumer. For example, there may be an underlying carrier whose facilities provide the long distance capacity and a resale carrier that actually sets the rates charged to the end user consumer. In some cases, there also may be a carrier that acts as a billing and collection or marketing agent.

29. Most commenters agreed that only the name of the IXC setting the consumer's rates should appear on the LOA. Some resellers opposing this requirement claim that some consumers will not give them their business because the consumers want their telephone service handled by a large carrier. These commenters argue that allowing the small IXC reseller to use the name of the larger underlying carrier is not confusing to consumers and is necessary to bolster consumer confidence. Based on numerous consumer complaints, we conclude that [\*\*32] it is in fact confusing to consumers for an LOA to contain the name of an IXC that is not providing service directly to the consumer. Because our rules only affect the LOA and not promotional materials, small IXCs may choose to use those materials to promote their affiliations with larger carriers in order to gain greater consumer acceptance. The LOA may not be used for such a purpose, however. Therefore, we will only permit the name of the rate-setting IXC on the LOA. n60

n60 We modify the proposed Section 64.1150(e)(4) to accommodate this and the multiple PIC issue, paragraph 32, *infra*.

30. In a related matter, several LECs have informed the Commission, that in some cases where the reseller sets the rates, consumers may be confused because the name of the underlying, facilities-based IXC may appear on the consumer's bill. BellSouth Telecommunications, Inc. (BellSouth) states that "currently the provider of interexchange service named on a customer's telephone bill rendered by BellSouth is determined by the carrier [\*9576] identification code (CIC). CICs are issued by Bellcore to facility-based IXCs. Thus, BellSouth has no present capability for bill identification of companies [\*\*33] which market to end users but do not own transmission facilities and do not have a CIC. Such capability could be achieved through the creation of a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs." n61 Although BellSouth states that it might be able to institute such a system within a year, BellSouth asserts that a national system of code administration and maintenance is preferred.

n61 Comments of BellSouth at 2.

31. We recognize that consumers may be confused if after they agree to switch their long distance service, the name of some other IXC appears on their bill. We expect all IXCs that do not have a CIC to explain to their new customers that another IXC's name may appear on the customer's bill. The IXC may also describe any relationship it has with the IXC named on the bill. Further, we urge LECs such as BellSouth to develop a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs. We defer a full examination of this issue to another proceeding.

32. Finally, certain commenters have informed the Commission that the jurisdictions they operate in either allow for two primary interexchange carriers ("2 PICs") n62 or [\*\*34] will likely allow "2 PICs" in the near future. n63 Typically, these jurisdictions allow for a separate inter-state IXC and an intra-state IXC. n64 Consumers may choose an IXC to provide them with either inter-state service, intra-state service, or both. Our proposed Section 64.1150(e)(4) n65 does not contemplate such a scenario and therefore we will modify the rule provision to accommodate 2-PIC jurisdictions as follows:

[The LOA must state] that the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary [\*9577] interexchange carriers (e.g., for intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate primary interexchange carrier and a subscriber's intrastate primary interexchange carrier. . . . n66

n62 See Comments and Replies of Allnet, Ameritech, GCI and GTE.

n63 See Reply Comments of Ameritech at 2.

n64 In the case of GTE Hawaiian Telephone Company Incorporated (GTE Hawaiian), the choices entail an international carrier and a interstate (mainland United States) carrier. GTE Comments at 3.

n65 The proposed Section 64.1150 (e) (4) states ". . . that the subscriber understands that only one interexchange carrier may be designated as the subscriber's primary interexchange carrier for any one telephone number and that selection of multiple carriers will invalidate all such selections. . . ."

n66 Section 64.1150 (e) (4). [\*\*35]

We note that the rule provision will, in effect, continue as originally proposed in those jurisdictions that do not recognize 2-PIC, which at the adoption of these rules represents the vast majority of the jurisdictions in the United States. This rule provision should, however, be flexible enough to accommodate any new 2-PIC jurisdictions in the future. n67

n67 We will allow the inclusion of both the inter-state PIC and the intra-state PIC on the same LOA. Each PIC named must be the rate setting IXC for its service area.

## 2. Business vs. Residential Presubscription

33. The Commission sought comment on whether business and residential customers should be treated differently with respect to our LOA requirements. Unlike the situation with many residential customers, LOA forms sent to businesses may not be received and processed by the person authorized to order long distance service for the business. In such a situation, even an LOA that is signed may result in an unauthorized change because the person who signed the LOA had no authority to do so. Most commenters contend that business and

10 FCC Rcd 9560, \*9577; 1995 FCC LEXIS 3900, \*\*35;  
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residential customers should be treated the same, "as long as the requirements [\*\*36] are reasonable for both types of customer" n68 One of these commenters contends that

if an LOA is clear and legible, it should not be subject to different rules based on the type of service provided. Carriers may have legitimate business reasons to combine marketing campaigns for different kinds of services, and may not even be able to distinguish between business and residence lines (e.g., where a business operates from the home). n69

n68 Comments of ACC Corp. at 6.

n69 Id.

Further, some suggest that a line be included on both the residential and the business LOA that indicates that the person [\*9578] signing the LOA is the person authorized to order service. n70

n70 Comments of NAAG at 8.

34. We are persuaded that there should be no distinction between business and residential customers with respect to our new LOA rules. Further, we do not believe it necessary at this time to require a line on the LOA indicating who is qualified to authorize a PIC change. This may be an addition that a prudent IXC may include on an LOA, because it remains the responsibility of the IXC to determine the responsible party in such a contractual arrangement. The validity of an LOA will continue [\*\*37] to depend on it having been signed by a person authorized to make the presubscription decision.

### 3. Consumer Liability Issues

35. In the NPRM, we asked whether any adjustments to long distance telephone charges should be made for consumers who are the victims of unauthorized PIC changes. Specifically, we asked whether consumers should be liable for the long distance telephone charges billed to them by the unauthorized IXC and if so, to what extent. We sought comment on whether consumers should be liable for: (a) the total billed amount from the unauthorized IXC; (b) the amount the consumer would have paid if the PIC had never been changed; or (c) nothing at all.

36. The majority of commenters support option (b), the "making whole" approach. These commenters contend that consumers should be liable to the unauthorized carrier for the amount they would have paid if the PIC had never been changed. Consumer groups, some state regulatory bodies, and some local telephone companies argue that the only way to stop slamming is to deny the "slammer" revenue and the only way to do that is to absolve consumers of all billed toll charges from unauthorized IXCs. n71 In addition, the Illinois [\*\*38] Congressional Delegation has expressed its concern "that many long-distance customers that have experienced this unauthorized switch in their service are forced to pay for services they did not order or knowingly approve." n72 It has asked the Commission to "examine the possibility of proposing a rule that [\*9579] will allow victims of 'slamming' to forfeit responsibility for charges billed by the long-distance company which switched their service without proper authorization." n73 Opponents of forgiving all charges argue that such a policy would lead to consumer fraud in that it "would provide the unscrupulous

with an incentive to claim wrongful conversion in order to avoid payment of legitimate long distance charges." n74 They claim that such a policy "would also impose undue penalties on carriers that had converted a consumer to their service in good faith only to find that the spouse or a relative from whom they had received authority for the PIC change was not actually empowered to grant that authority." n75

n71 See Comments of Consumer Action, New York Public Service and Southwestern Bell.

n72 Letter from Senator Carol Moseley-Braun, Senator Paul Simon, Representative Glenn Poshard, Representative Cardiss Collins, Representative Jerry Costello, Representative Richard Durbin, Representative Lane Evans, Representative Luis Gutierrez, Representative Mel Reynolds, Representative William Lipinski, Representative Dennis Hastert, and Representative Sidney Yates to Reed E. Hundt, Chairman, Federal Communications Commission, January 12, 1995.

n73 Id.

n74 See Comments of MIDCOM Communications Inc. (MIDCOM) at 12.

n75 Id. [\*\*39]

37. Despite the compelling arguments of those favoring total absolution of all toll charges from unauthorized IXCs, we are not convinced that we should, as a policy matter, adopt that option at this time. The "slammed" consumer does receive a service, even though the service is being provided by an unauthorized entity. The consumer expects to pay the original rate to the original IXC for the service. n76 Except for the time and inconvenience spent in obtaining the original PIC, consumers are not injured if their liability is limited to paying the toll charges they would have paid to the original IXC. We recognize, however, that this may not be the best deterrent against slamming. Some IXCs engaging in slamming may not be deterred unless all revenue gained through slamming is denied them. We will investigate future slamming cases with the question of consumer liability in mind. At this time, we believe that the equities tend to favor the "make whole" remedy and therefore support the policy of allowing unauthorized IXCs to collect from the consumer the amount of toll charges the consumer would have paid if the PIC had never been changed. We expect all unauthorized IXCs to cooperate [\*\*40] with consumers in the proper settlement of these charges. Failing this, through the complaint process, we will prohibit unauthorized IXCs from collecting more than the original IXC's rates. However, we recognize that if "slamming" continues unabated -- perhaps through abuses in areas other than the use of the LOA -- we may have to revisit this question at a later date.

n76 Of course, this assumes that the telephone service is comparable in all relevant aspects. A slammed consumer may have a cause of action through the Commission's complaint process to reduce the amount paid to the unauthorized IXC if the service of the unauthorized IXC is demonstrably inferior to that of the original IXC.

38. We also asked the public to comment on the effect that unauthorized PIC changes have on optional calling plans and the [\*\*580] consumers enrolled in them. In cases of unauthorized PIC changes, the consumer may not be aware of

the change for at least one billing cycle. Often, these consumers continue to pay a flat, minimum monthly charge to their previous carrier for a discount calling plan despite the fact that they are no longer presubscribed to that carrier. n77 Most commenters agree that [\*\*41] consumers should not be liable for optional calling plans if they are no longer connected to their original carrier, but several differ on exactly how the consumer should recoup their loss. Most commenters contend that the consumer should simply be absolved of all calling plan liability from the moment the consumer is slammed. n78 Several commenters contend that the original carrier should bill the offending carrier for the lost revenue. n79 Some commenters suggest that however it decides to handle consumer liability issues, the Commission should not expect LECs to resolve consumer/IXC disputes. n80

n77 These consumers may still access the previous IXC's long distance service by using an access code or through the use of any "calling cards" issued by the IXC to the consumer, but it is unlikely that many consumers intend to use an optional calling plan only in this manner.

n78 See Comments of Southwestern Bell, New York Public Service and Hertz Technologies, Inc. (Hertz Technologies).

n79 See Comments of MIDCOM, Telecommunications Resellers Association and Touch 1.

n80 See Comments of Pacific Bell and Nevada Bell and GTE.

39. We agree with the majority of commenters that [\*\*42] the equities strongly favor absolving slammed consumers from liability for optional calling plan payments. It is reasonable that consumers should not have to pay for services they cannot enjoy in the manner they had contemplated. For example, consumers that only receive discounts on their residential telephone service as a benefit in return for optional calling plan premiums should not have to continue to pay those premiums if their residential telephone service is slammed. However, there may be cases where consumers receive benefits in addition to their presubscribed telephone service discounts, such as the use of a domestic or international "calling card," not associated with a presubscribed telephone number. In such cases, consumers should be liable for some calling plan payment even if the presubscribed service has been changed, as long as those consumers are clearly informed upon initiation of the optional calling plan. Consequently, we will not allow IXCs to collect optional calling plan premiums for slammed consumers, unless the IXC has stated clearly in its tariff that its presubscribed customers are liable for calling plan premiums in compensation for benefits in addition [\*\*43] to the customer's presubscribed service, even if the presubscribed service is [\*9581] changed. The IXC will be required to give prior notice to its customers regarding its additional benefits and its compensation expectations through its tariff and its customer service material.

#### 4. Fully Translated LOAs

40. The non-English speaking population represents a growing market in this country that IXCs are targeting for their domestic and international business. Some of these consumers have alleged that the non-English versions of the LOA do not contain all of the text of the English versions of the LOA. As a result,

material portions of the LOA are in only one language, typically English, which the non-English speaking consumers may not fully understand. We sought public comment on whether we should adopt rules to govern bilingual or non-English language LOAs. n81 Specifically, we asked whether we should require all parts of an LOA translated if any parts were translated. The overwhelming majority of commenters stated that we should adopt such a rule. We agree that such a requirement is necessary to ensure that all consumers can make informed choices. Therefore, we require all IXC's [\*\*44] that choose to translate any part of the LOA to translate all parts of the LOA and consequently, we adopt Section 64.1150 (f). n82

n81 We intend that all of our rules and policies adopted in this proceeding apply to bilingual or non-English LOAs as well as English-language LOAs.

n82 If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

#### 5. LOA Title

41. Consumer groups, state regulatory bodies, and resellers contend that a consumer may be less confused and more informed if the LOA is titled in a more understandable style. n83 For example, commenters suggest titling the LOA document: "An Order to Change My Long Distance Telephone Service Provider," "Application to Change My Long Distance Company," or "Order Form to Change My Long Distance Telephone Service." Although we will not prescribe a particular title for the LOA, we agree with these commenters and strongly suggest that all IXC's use a clear, easily understandable title.

n83 See Comments of Consumer Action, New York Public Service and ACTA.

#### 6. Consumer-Initiated Calls

42. Finally, we asked the public how consumers [\*\*45] have been affected by the IXC marketing practice of "encouraging" consumers to authorize a PIC change when they call an IXC's business number for other reasons. Typically, the consumers, in response to an [9582] advertisement, are just requesting general information about the IXC and do not intend to initiate a PIC change. We are persuaded by some commenters, resellers, local telephone companies, and consumer groups who advocate extending the Commission's PIC verification procedures to consumer-initiated calls. n84 Some commenters, however, argue that because the IXC does not initiate the call, the PIC order is not generated by telemarketing and, thus, the order verification protections in Section 64.1100 of our rules should not apply. n85 Those commenters fail to explain adequately why a consumer who initially places a call to an IXC's business number, presumably searching for information, should benefit less from rules designed to curb deceptive practices than the consumer receiving a call from a telemarketer. We are not convinced there is enough of a difference between the two situations as to justify such vastly different treatment. We agree with Consumer Action that consumers "responding [\*\*46] to a 30-second television ad . . . calling to get answers to questions . . . are as subject to unauthorized conversion as a consumer who was called at home." n86 We also agree that upon adoption of our rules, some "IXCs may switch from mailing inducement-laden LOAs to mailing marketing pieces in which a consumer is urged to call an business number in order to receive a promised inducement" n87 where "[a]n unauthorized

10 FCC Rcd 9560, \*9582; 1995 FCC LEXIS 3900, \*\*46;  
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conversion could easily take place on such a call." n88 Therefore, we will extend PIC verification procedures to consumer-initiated calls to IXC business numbers.

n84 See Comments of Touch 1, GTE and Consumer Action.

n85 See Comments of AT&T at 22 and MCI at 14.

n86 See Comments of Consumer Action at 3-4.

n87 Id.

n88 Id.

#### 7. Preemption of State Law

43. Although we did not seek comment on the matter, some of the resellers urged the Commission to preempt inconsistent state law with regard to "slamming." n89 These commenters generally argue that "[t]he Commission's LOA requirements should be applied nationwide and the individual states should not be allowed to impose their own LOA requirements in addition to those of the Commission." n90 None of these commenters, [\*\*47] however, cites specific state regulations that warrant federal preemption. At most, ACTA asserts that "two state public utility commissions, Florida and South Carolina, . . . currently have on-going proceedings concerning [\*9583] the rules for consumer selection of interexchange carriers." n91 Until and unless we receive specific allegations of specific state statutes that warrant federal preemption, we cannot consider or act on these commenters' requests for federal preemption. We note that the record shows that state action regarding "slamming" appears to be consistent with our own. Therefore, we decline at this time to preempt any state law regarding the unauthorized conversion of consumer's long distance service. We will consider specific preemption questions on a case-by-case basis.

n89 See Comments of ACC Corp., ACTA and One Call.

n90 Comments of One Call at 5, n.12.

n91 Comments of ACTA at 11.

#### IV. REGULATORY FLEXIBILITY ACT FINAL ANALYSIS

44. Need for Rules and Objective. We have adopted rules designed to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are fully in control of their long distance service choices. [\*\*48]

45. Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis. No comments were received specifically in response to the Initial Regulatory Flexibility Analysis.

46. Alternatives that would lessen impact. We have considered alternatives suggested in the record and have found that they would not be comparably effective. Small entities may feel some economic impact in additional

printing costs because of these new letter of agency requirements. Because the rules will not take effect for sixty (60) days, we believe all IXCs, large and small, will have sufficient advance time to revise and print new LOAs.

#### V. CONCLUSION

47. In this Report and Order, we have adopted rules clearly delineating what must be included in an LOA document and, equally important, what may not be included in an LOA document. These rules are intended to limit the contents of an LOA document so that its sole purpose and effect are to authorize a PIC change. The proposed restrictions should eliminate consumer confusion about the intent and function of the LOA. Further, our policy decisions should further clarify our position regarding other "slamming" issues. We wish to [\*\*49] make clear that although our evolutionary approach to the "slamming" problem has generally been one of regulatory restraint, we will not tolerate continued abuses against consumers and may revisit this question if warranted.

48. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose [\*9584] new and modified third party reporting requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

#### VI. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. @ 151, 154(i), 154(j), 201-205, 218, 303(r), that 47 C.F.R. Part 64 is amended as set forth in the Appendix B.

50. IT IS FURTHER ORDERED, that the Chief of the Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules, and requirements set forth herein.

51. IT IS FURTHER ORDERED, that this Report and Order will be effective sixty (60) days after publication of a summary thereof in Federal Register. [\*\*50]

FEDERAL COMMUNICATION COMMISSION

William F. Caton

Acting Secretary

#### APPENDIX: APPENDIX A

Comments Filed

ACC Corporation

Allnet Communication Services, Inc.

America's Carriers Telecommunications Association

AT&T Corp.

Communications Telesystems International

Competitive Telecommunications Association

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Consumer Action  
Florida Public Service Commission  
Frontier Communications International Inc.  
General Communication, Inc.  
GTE Service Corporation  
Hertz Technologies, Inc.  
Hi-Rim Communications, Inc.  
Home Owners Long Distance, Inc.  
L.D. Services, Inc.  
LDDS Communications, Inc.  
Lexicom, Inc.  
MCI Telecommunications Communications Corporation  
MIDCOM Communications Inc.  
Missouri Public Service Commission, et al.  
National Association of Attorneys General, et al.  
New York Department of Public Service  
NYNEX Telephone Companies  
One Call Communications, Inc.  
Operator Service Company  
Pacific Bell and Nevada Bell  
People of the State of California, et al.  
Public Utility Commission of Texas  
Southwestern Bell Telephone Company  
Sprint Communications Co.  
State of Michigan, Attorney General  
State of Wisconsin, Attorney General  
State of New York, Attorney General  
Telecommunications [\*\*51] Company of the Americas, Inc.  
Telecommunications Resellers Association  
Touch 1, Inc. and Touch 1 Communications, Inc.  
William Malone

Reply Comments Filed

ACC Corporation  
Alabama Public Service Commission  
Allnet Communication Services, Inc.  
Ameritech Operating Companies  
AT&T Corp.  
Bell Atlantic Telephone Companies  
BellSouth Telecommunications, Inc.  
Commonwealth Long Distance  
Communications Telesystems International  
Competitive Telecommunications Association  
Custom Telecommunications Network of Arizona, Inc.  
General Communication, Inc.  
GTE Service Corporation  
Hi-Rim Communications, Inc.  
L.D. Services, Inc.  
LDDS Communications, Inc.  
Local Area Telecommunications, Inc.  
MCI Telecommunications Communications Corporation  
National Association of Regulatory Utility Commissioners  
Oncor Communications, Inc.

One Call Communications, Inc.  
Operator Service Company  
Pennsylvania Public Utility Commission  
Pacific Bell and Nevada Bell  
Southwestern Bell Telephone Company  
Sprint Communications Co.  
Telecommunications Resellers Association

#### APPENDIX B

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended [\*\*52] as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Part 64, Subpart K, is amended by amending Section 64.1100(a) to read as follows:

@ 64.1100 Verification of orders for long distance service generated by telemarketing. \* \* \*

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of Section 64.1150, below, \* \* \*

3. Part 64, Subpart K, is amended by adding Section 64.1150 to read as follows:

@ 64.1150 Letter of Agency Form and Content

(a) An interexchange carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange carrier change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described below) whose sole purpose is to authorize [\*\*53] an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.

(c) The letter of agency shall not be combined with inducements of any kind on the same document.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (e) below and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier change by

signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

1) the subscriber's billing [\*\*54] name and address and each telephone number to be covered by the primary interexchange carrier change order; and

2) the decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier; and

3) that the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change; and,

4) that the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate primary interexchange carrier and a subscriber's intrastate primary interexchange carrier; and

5) that the subscriber understands that any primary interexchange carrier selection the subscriber [\*\*55] chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier.

(f) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.

(g) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

